

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
John Dennis,)	
Plaintiff,)	
)	
v.)	CIV. NO. 05-CV-11270-GAO
)	
Wachovia Securities, LLC,)	
Defendant.)	
_____)	

AFFIDAVIT OF EDMUND POLUBINSKI, JR.

The undersigned, Edmund Polubinski, Jr., states under pains and penalties of perjury:

1. I am a member, in good standing, of the bar of The Commonwealth of Massachusetts and my BBO number is 402640.
2. I obtained a tape recording of the hearing in In the Matter of the Arbitration Between John Dennis v. Wachovia Securities, LLC and Michael Ewanouski, Case Number 04-00361 ("Arbitration").
3. The following (##4-6) are, to the best of my knowledge and ability excerpts from such hearing.
4. Mr. Ewanouski's cross examination:

Q—Did you ever talk about risk?

A—In the very beginning when we started our relationship in 1992 we talked about the benefits and the pluses or minuses of buying stocks on a per stock basis no we did not talk about risk. We had a relationship that had gone on a long time that was consistent from day one to the very end.

Q—After the discussion in 1992 you never discussed risk?

A—On an individual stock basis no, to the best of my knowledge.

Q—On the basis of the entire portfolio, did you discuss risk?

* * *

A—No, on the basis of the entire portfolio I don't believe I ever did."

5. Mr. Ewanouski's cross examination:

“Q—Is there an investment objective checked?

A—Yes, there is growth with a quality emphasis.

Q—Is that a speculative emphasis?

A—No it is not.”

6. Mr. Ewanouski's cross examination:

“Q—What about suitability. What's your understanding of the SEC' uh NASD's requirement of suitability?

A—By knowing your client by talking to your client, by what your client trying to get accomplished. . .”

* * *

7. Exhibit A hereto is a true and correct copy of the Arbitrator Ranking Form and the Arbitrator Disclosure Forms of Messrs Anderson and Acerra which were provided with the ranking form and the webpage of Mr. Levy the third arbitrator in the Arbitration.
8. Exhibit B is a true and correct copy of ¶¶ 15 through 27 of Plaintiff's complaint in the above captioned action.

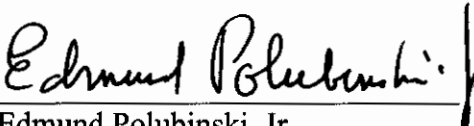
Dated August 8, 2005


Edmund Polubinski, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by hand on August 8, 2005. I caused it to be delivered to Deborah Gale Evans, Esq. Michaels & Ward, LLP, One Liberty Square, Boston, MA 02109.

Dated: August 8, 2005


Edmund Polubinski, Jr.

Report ID: NLSS007

ARBITRATOR RANKING FORM

Case ID: 04-00361 Case Name: John Dennis vs. Wachovia Securities, LLC, and Michael Ewanowski

Public Arbitrator	Arbitrator ID	Panelist Name	Party Ranking/Struck
	A03917	Ms. Lucy J. Karl Esq.	_____
	A03993	Mr. Thomas H. Tucker Esq.	_____
	A31394	Prof Ruth-Ellen Post JD	_____
	A30842	Mr. David S. Kirk	_____
	A31604	Mr. Frank E. Wolf	_____
	A09455	Mr. Warren D. Hutchison Esq.	_____
	A11855	Ms. Colette Manoil Esq.	_____
	A12416	Mr. David J. Anderson	_____
	A12596	Mr. Barton B. Skeen Jr. Esq.	_____
	A12940	Mr. Arnold M. Marrow Esq.	_____

Industry Arbitrator	Arbitrator ID	Panelist Name	Party Ranking/Struck
	A12204	Mrs. Tobi J. Lesse	_____
	A31851	Mr. Patrick W. McKeon Esq.	_____
	A32017	Ms. Laura M. Nelson Esq.	_____
	A10695	Mr. Robert W. Crook	_____
	A14510	Mr. Stephen M. Acerra Jr. Esq.	_____

Claimant/Respondent: _____

Submitted By: _____
(Please Print Name)

on behalf of: _____

Signed: _____

Report ID: NLSS007

Case: 04-00361 Arbitrator: A12416

ARBITRATOR DISCLOSURE REPORT

Arbitrator information, other than the publicly available awards section, below, last amended on 4/13/2004

ARBITRATOR

<u>Arb ID</u>	<u>Arbitrator Name</u>	<u>Industry/Public</u>
A12416	Mr. David J. Anderson	Public Arbitrator
	<u>City/State/Country</u>	
	Woodland Hills / CA / USA	

SKILLS IN CONTROVERSY

<No Skills Listed>

SKILLS IN SECURITIES

<No Skills Listed>

EMPLOYMENT/EDUCATION

<u>Begin Date</u>	<u>End Date</u>	<u>Type</u>	<u>Firm/School</u>	<u>Position/Degree</u>
9/1/1971	8/1/1973	Education	Pepperdine University	MBA
9/1/1957	6/1/1962	Education	University of California	BS
10/1/1992		Employment	Anderson & Associates	President
2/1/1980	10/1/1992	Employment	Electronic News	National Mktg Manager

TRAINING

<u>Begin Date</u>	<u>End Date</u>	<u>Description</u>	<u>Firm/School</u>	<u>Certification</u>
9/30/1992	9/30/1992	Served as Arbitrator 1/1/90-12/31/92	Presided at Hearing	-
7/19/1993	7/19/1993	Non-Securities Related Training	Mechanics of Broker	-
7/20/1993	7/20/1993	Non-Securities Related Training	Basic Arbit. Video	-
8/3/1993	8/3/1993	Non-Securities Related Training	Vacture of Awards	-
8/3/1993	8/3/1993	Non-Securities Related Training	Managing Arbitration	-
9/14/1993	9/14/1993	Non-Securities Related Training	Statute of Limitation's	-
11/10/1993	11/10/1993	Non-Securities Related Training	Failure to Supervise	-
11/10/1993	11/10/1993	Non-Securities Related Training	Duties of A.E.	-
11/10/1993	11/10/1993	Participatory Arbitrator Skills Program	Duties that Flow	2 hours
6/14/1994	6/14/1994	Participatory Arbitrator Skills Program	Vacating Arb. Awards	2 hours LAX
2/26/1996	2/26/1996	Chairperson Securities Training	NASD	6 hours LAX
4/21/1999	4/21/1999	New Chairperson Training [NASD]	NASD	4 hours LAX
6/14/1999	6/14/1999	New Panel Member Training [NASD]	NASD	11 hours LAX

DISCLOSURE/CONFLICT INFORMATION

<u>Type/Sub-Type</u>	<u>Description</u>
Has made disclosure about	Sat as President of Special Cts Martials (US Navy)
Has/Had an account with	RBC Dain Rauscher-IRA/Family Trust/personal
Is a member of	B.C. & M.A.
Is a member of	B.P.A.A.
Is a member of	W.P.A. - Vice President

PUBLICLY AVAILABLE AWARDS

<u>Case ID</u>	<u>Case Name</u>	<u>Closed Date</u>
02-01478	Michelle T. Fisher v. Merrill Lynch, Pierce, Fenner & Smith Inc. and Stephen	3/24/2004

02-04633	Larry Allen Stanley v. Randolph Moore and Robert Bidwell	3/16/2004
02-04731	Joe and Judy Gergely JTWROS vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.,	3/8/2004
02-02381	Stephen H. Cruikshank, et al vs. Edward Jones & Co., Anthony A. Goheen and W.	2/6/2004
03-00789	Joseph and Carolyn Murray v. Salomon Smith Barney, Inc., Howard Guggenheim,	1/23/2004
02-04961	Colleen Fields vs. Wachovia Securities, Inc.	10/23/2003
02-02621	John C. Brady, II v. Prudential Securities, Inc. and James J. Yglesias,	10/15/2003
02-06805	Dagmar Wineinger vs. US Bancorp Piper Jaffray and Vincent H. Rossi	9/29/2003
02-01960	Beth Susan Fuchs, Gary W. Fuchs, and et al v. Raymond James Financial	7/29/2003
99-01084	Fakhrosadat Zohary and Aarash Hosseinpour v. Thomas F. White & Co.	5/12/2003
02-04606	Norman R. Levins vs. Kevin F. Cuddihy and David Brockway	3/3/2003
00-02642	Mike Malow and Annette B. Malow Trust v. Morgan Stanley Dean Witter and James	10/24/2002
01-03508	Kai Bender vs. Banc of America Investment Services, Inc. and Meryl	8/30/2002
01-01244	Hoffer Family Trust v. Merrill Lynch, Spencer W. Beard and Gerard	8/28/2002
00-00070	David Rice v. Cohig & Associates a/k EBI Securities Corporation & Lawrence	8/7/2002
00-03608	John K. Schels & The Estate of Jeanne E. Schels v. PaineWebber Incorporated,	6/20/2002
01-00740	Ameritrade, Inc. v. Xintian Li	4/15/2002
00-02536	Alen Ajed v. Merrill Lynch, Pierce Fenner & Smith	4/12/2002
00-01325	Michael J. Del Monaco, et al. v. Charles Schwab & Co., Inc.	5/21/2001
99-03068	Dana Fuller, et al v. Frank M. Orrell; Orell and Company, Inc.; Matthew	5/7/2001
00-00055	Sheldon R. Blum v. Olde Discount Corporation and Craig Wisbiski	4/5/2001
99-05026	Debi A. Christenhusz, IRA vs. Douglas D. Crawford, PSF Investments,	3/22/2001
99-05292	Ameritrade, Inc. v. Steve Noh	3/22/2001
99-03865	Steven J. Soja vs. Lehman Brothers, Inc., and William Welsh	11/17/2000
99-04489	Olde Discount Corp. vs. Dennis & Catherine Phillips	9/28/2000
98-04507	Kerry D. & Danette Erickson vs. H.J. Meyers, S.G. Cowen Securities Corp. and	8/9/1999
97-00072	Gary Fetman vs. Monitor Investment Group, Inc., Ken Fuina, Mark Burton, Norman	9/22/1998
97-04721	Leon P. McGroarty vs. Jeffrey Rosenstein, Ron Barhorst; Louis Fiorino;	6/1/1998
97-03808	James Witkowski vs. H.J. Meyers, Inc. and Jason Smith	5/12/1998
96-03555	Baraban Securities Incorporated vs. Western International Securities, Jon	4/3/1998
97-02691	Deborah M. Brown vs. Long Securities Corporation, Lawrence S. Jay vs. Albert	3/2/1998
97-01183	Hazel C. Harrelson vs. Del Mar Financial Services, Kevin Dills and Anthony	2/4/1998
96-05578	Howard Gensler v. John Hiers	12/23/1997
96-05253	Paul R. Eberle vs. John Puglis, Herman Epstein and Investors Associates,	8/29/1997
96-03496	M2 Software, Inc. vs. Herzog, Heine, Geduld, Inc.	3/19/1997
95-01917	Joan C. Kitchen vs. Dean Witter Reynolds Inc., et al.	12/11/1996
95-03907	LMDE, Inc. vs. Smith Barney Shearson and Prudential Securities, Inc.	12/3/1996
95-02988	Barry Weiner vs. Smith Barney, Inc. f/k/a Shearson, Lehman Brothers,	7/19/1996
95-03968	Michael C. Laugen vs. Stratton Oakmont, Inc. and Samuel R. Weber	6/14/1996
95-03776	Scott R. Trimingham and Donna I. Trimingham vs. Edward Kelly IDS Financial	5/9/1996

ARBITRATOR BACKGROUND INFORMATION

I received a Bachelor of Science degree from the University of California in 1962. From then until 1968, I was an officer in the U. S. Navy. I served on several ships involved in the Vietnam War. In addition to being the gunnery training officer for the Atlantic Fleet Training Group in Guantanamo Bay. I also served as the President of Special Courts Martials for over a year. I sold computers and computing for IBM and Computer Sciences Corporation in the early 1970's. Following that I was a partner in International Features.

In 1974, I received my M.B.A. degree from Pepperdine University. From 1975 through 1978, I was the business and advertising manager for Rangefinder Publishing. I was the production manager for Interface Age Publishing in 1979.

From 1980 to 1992, I was involved in marketing for Electronic News as the National Marketing Manager. In the fall of 1992, I formed Anderson & Associates, a marketing consulting organization.

02-05950	Catherine Burgess vs. Kevin Jackson and Janney Montgomery Scott, LLC	10/30/2003
01-06698	Tray Cahillane vs. Morgan Stanley Dean Witter, Inc. and Declan Maher	1/14/2003
99-01570	Leerink Swann & Company v. Paul Sheldon	10/2/2000
97-04910	Stephen Skoly vs. Joseph Dillon & Company, Mark Elliott and J.B.	3/6/2000
98-03450	Daniel Gonyea vs. David LeFort & Gruntal & Co.	2/18/2000
97-04328	Eric S. Bazil vs. Merrill, Lynch, Pierce, Fenner & Smith, Inc.; Marie	8/20/1999
97-03151	Cynthia R. Dicostanzo, as TTEE, Giorgio Dicostanzo and Mario Dicostanzo vs.	1/25/1999
97-04044	Thomas P. Ricci vs. Coburn & Meredith, Inc., Steve J. Wilson and Barry M.	1/5/1999
97-04335	John Diaz vs. D.H. Blair & Co., Inc., Kenton E. Wood, William Badinelli and	10/20/1998
97-04406	Harold E. Debona vs. Bear Stearns & Co., Inc and Albert J. Sabini	8/6/1998
97-00421	Theodore R. Turner, Jr. vs. Linsco/Private Ledger Corp.	5/1/1998
96-03064	John L. & Esther S. Bala vs. Smith Barney, Inc.	10/10/1997
95-04247	John J. & Theresa T. Kavorkian v. Thomas A. Arpante, PaineWebber, Inc.,	11/19/1996

ARBITRATOR BACKGROUND INFORMATION

My professional background consists of educational training and degrees in both law and business administration (with undergraduate concentrations in accounting and finance). I have been actively engaged in the practice of law since 1985. At the outset, I maintained a general practice of law, and thereby gained exposure to a wide range of legal matters. I have represented numerous clients in appearances before every level of state and federal trial and appellate court in Massachusetts, including the Massachusetts Supreme Judicial Court, the U. S. Tax Court, and the U. S. Court of Appeals for the First Circuit.

Since 1990, my professional practice has become increasingly specialized, and is now focused on matters involving state and federal taxation, estate planning and administration, and financial planning and investments. I also engage in a small amount of real estate work, and occasional litigation in all of the above areas and in the area of administrative law. In 1990, in order to supplement my tax practice, I also became a registered securities representative (NASD Series 7 and 63) and began an affiliation as a member of the estate and financial planning professional staff at American Express Financial Advisors, Inc. (formerly IDS Financial Services, Inc.).

In 1991, on behalf of several American Express subsidiaries, I authored a comprehensive 125 page report entitled "Analysis of Compensation Payment Alternatives to Life Annuity Awards under the National Childhood Vaccine Injury Act of 1986" that was submitted together with my oral testimony as an expert witness in the U. S. Claims Court in Washington, D.C. The analysis and proposals set forth in this report were adopted by the Court in fashioning unique remedies for the distribution and management of billions of dollars in federal victim compensation awards under the National Vaccine Injury Compensation Program, 42 U.S.C. 300aa-10 et seq.

In 1993, I transferred my securities licenses and client accounts to Commonwealth Equity Services, Inc., a full-service independent broker/dealer headquartered in the Boston area. As an independent contractor and financial advisor with Commonwealth, I am currently responsible for several dozen individual, retirement, trust and business client accounts under active investment management in stocks, corporate and municipal bonds, options, unit investment trusts, mutual funds, annuities, and federal tax credit limited partnerships. Client brokerage accounts are carried and cleared through the National Financial Services subsidiary of Fidelity Investments.

In 1993, I also began employment at Boston Financial Data Services, Inc. (BFDS). BFDS is the shareholder service and transfer agent for State Street Bank and Trust Company, and is jointly owned by State Street Boston Corporation and DST Systems, Inc. With over U. S. \$2.3 trillion in assets under custody, and over U.S. \$240 billion in assets under portfolio management, State Street is one of the largest global custodians of financial assets in the world, and one of the largest domestic asset management firms in the United States. At BFDS/State Street, I am currently responsible for providing legal quality control and compliance supervision for multiclass mutual fund administration in an operations group consisting of approximately 400,000 shareholder accounts invested in 76 mutual funds with a market value in excess of U.S. \$5.7 billion.

ARBITRATOR DISCLOSURE REPORT

Arbitrator information, other than the publicly available awards section, below, last amended on 4/13/2004

ARBITRATOR

<u>Arb ID</u>	<u>Arbitrator Name</u>	<u>Industry/Public</u>
A14510	Mr. Stephen M. Acerra Jr. Esq.	Industry Arbitrator
	<u>City/State/Country</u>	
	Boston / MA / USA	

SKILLS IN CONTROVERSY

<No Skills Listed>

SKILLS IN SECURITIES

<No Skills Listed>

EMPLOYMENT/EDUCATION

<u>Begin Date</u>	<u>End Date</u>	<u>Type</u>	<u>Firm/School</u>	<u>Position/Degree</u>
1/1/1980	1/1/1984	Education	Suffolk University Law School	Juris Doctor
1/1/1976	1/1/1980	Education	University of Massachusetts	Bachelor of Business
1/1/1969	1/1/1976	Education	Boston Latin School	Diploma
3/1/2004		Employment	National Fiduciary Services, LLC	President & CEO
11/7/1993	7/4/2003	Employment	Boston Financial Data Services	Director
1/1/1993		Employment	Commonwealth Equity Services	NASD Broker/Dealer
1/1/1990	1/1/1992	Employment	American Express Financial	NASD Broker/Dealer
1/1/1985		Employment	Acerra & Associates	Financial Counsel

TRAINING

<u>Begin Date</u>	<u>End Date</u>	<u>Description</u>	<u>Firm/School</u>	<u>Certification</u>
1/1/1994	1/1/1994	Additional Securities Training	NASD Spring Sec. Conference	NYC
3/19/1996	3/19/1996	Intro Securities Arbitrator Training	NASD	7 hours BOS
7/2/1997	7/2/1997	Employment Law Training	NASD	4 hours BOS
7/9/1997	7/9/1997	Employment Law Training	NASD	4 hours NYC
5/19/2000	5/19/2000	New Chairperson Training [NASD]	NASD	11 HRS BOS
9/1/2000	9/1/2000	Non-Securities Related Training	Harvard Law Sch/DR Program(PIL)	-

DISCLOSURE/CONFLICT INFORMATION

<u>Type/Sub-Type</u>	<u>Description</u>
Family Member has relationship with	Spouse works for: Putnam Investments
Has/Had an account with	Commonwealth Equity Services, Inc.
Has/Had an account with	Putnam, Fidelity and Dreyfus Mutual Fund Companies
Holds Securities License(s)	Series 7 and 63
Is a member of	Justinian Law Society of Massachusetts, Inc.
Member of Bar Association	American Bar Association
Member of Bar Association	Boston Bar Association & Boston Estate Planning
Member of Bar Association	Massachusetts Bar Association
Was/is Expert Witness for	For American Express Financial Advisors, Inc. 1991

PUBLICLY AVAILABLE AWARDS

<u>Case ID</u>	<u>Case Name</u>	<u>Closed Date</u>
-----------------------	-------------------------	---------------------------

Corrigan & Levy LLP | Boston

about | contact | bios |



Jeff Levy is an experienced commercial litigator whose practice emphasizes the law of competition, including protection of trade secrets, drafting and enforcement of non-compete agreements, and claims of unfair trade practices. His clients include high technology companies, traditional manufacturing businesses, financial services companies, and individuals.

Mr. Levy has also served as a mediator in numerous cases and has completed the mediation training required for certification pursuant to Mass. General Laws chapter 233, §23C. He also serves as an arbitrator on the National Association of Securities Dealers ("NASD") panel of neutrals. Examples of Mr. Levy's recent cases include:

- An NASD arbitration in which Mr. Levy's client, a national discount brokerage firm, alleged a competitor had "raided" one of its branch offices, hiring away employees and taking confidential customer information. Mr. Levy's client prevailed after a twelve day hearing, obtaining one of the largest awards of money damages in a raiding case in NASD history.
- A lawsuit in which Mr. Levy's client, a senior technology analyst, was sued by his former employer to enforce a non-compete agreement after the analyst formed his own consulting firm. Mr. Levy successfully opposed the employer's motion for a preliminary injunction, after which the employer dropped the lawsuit.
- An arbitration involving claims that Mr. Levy's client, a consulting firm, had botched the implementation of an Enterprise Resource Planning ("ERP") software package at a large manufacturing company. Mr. Levy and his partner successfully defended the consulting firm during a seven day hearing in Houston.
- A dispute in which Mr. Levy's client, a California software developer, was sued in federal court by a dissatisfied customer seeking millions of dollars in damages. Mr. Levy successfully moved to dismiss two of the plaintiff's four claims, significantly

reducing his client's exposure. The remaining claims were settled after mediation.

Mr. Levy began his career as a litigation associate at Nutter, McClennen & Fish in Boston, and has worked at law firms in Boston and Minneapolis. Immediately prior to forming Corrigan & Levy LLP, he was a partner at Donnelly, Conroy & Gelhaar, LLP in Boston. He is a graduate of Carleton College and the University of Minnesota Law School, where he was an editor of the Minnesota Law Review. Following law school, Mr. Levy served as a law clerk to the Honorable Gerald W. Heaney of the United States Court of Appeals for the Eighth Circuit. He is admitted to practice in the state and federal courts of Massachusetts and Minnesota.

Contact jeff@corriganlevy.com

Exhibit B

12. Claimant sets forth in his statement of claim (attached hereto as Exhibit 3) that Respondent recommended and purchased during the period September 20, 1999 to and including April 4, 2002 the following securities which he claims were unsuitable:

<u>Security</u>	<u>Loss</u>
Ask Jeeves, Inc.	\$6,428.13
ELOT, Inc	\$16,687.50
EntreMed	\$11,212.50
Focus Enhancements	\$3,033.44
H Power	\$4,315.00
IXL Enterprises	\$10,389.99
Intasys Corp.	\$19,257.81
VA Linux Systems, Inc	\$38,372.50
SLI, Inc.	\$2,343.75
Intellidata	\$20,860.59

Or a total of \$132,891.21

13. Claimant did not introduce evidence on Ask Jeeves, Inc, Focus Enhancements and IXL leaving total losses proved of \$113,039.65.
14. Claimant's chinks showing his investment holdings on 9/20/99, 12/31/99, 6/30/00, 12/30/00, 6/30/01 and 4/4/02 , which were admitted as demonstrative evidence are attached as Exhibit 4.
15. Claimant's expert John Kattar testified as to his qualifications and to the methodology to determine whether the stocks were appropriate investments for Claimant:

"Q—Please tell us your educational background after high school.

A—I have—I graduated from the University of Massachusetts with a bachelor of arts degree and then went on to get a masters in electrical engineering, also from the same institution.

Q—When did you, forgive me for interrupting, when did you get your bachelor's degree?

A—1978.

Q—And what was your major course of study?

A—It was in classical languages.

Q—And your masters?

A—First masters was in electrical engineering and I believe that was in 1982 and MBA—Masters in Business Administration was from the University of Chicago. And that was in 1988.

Q—Did you graduate from any of these institutions with honors?

A—Ah Yes, all of them.

* * *

Q—Ah, Please give us a brief employment history after you received your MBA?

A—I worked for 9 years at Baring Asset Management as an analyst and portfolio manager.

Q—Where was that?

A—In Boston.

* * *

A—I was responsible for managing money mostly for large pension plans, some individuals, and half domestic and half international clients

Q—And you left Baring Asset Management, why did you leave?

A—Better job, more money—went to work for Phoenix Investment Partners which is a mutual fund, mostly mutual fund money manager, in Hartford, Connecticut and there headed up the investment team and was there for 2 years.

Q—And did you leave?

A—Yes.

Q—Why did you leave?

A—Again left for a better opportunity but more so for personal reasons. I needed to return to the Boston area for personal reasons.

Q—And with whom did you work?

A—I was then employed at the Boston Company Asset Management for 2 ½ years as head of their equity group.

Q—And what were your duties there?

A—Uh, I managed a group of about 30 investment professionals and we managed about 15 B{M?}illion Dollars. So I had administrative responsibilities as well as investment management responsibilities.

Q—With respect---Did you leave that job?

A—Sort of , I actually went to the parent company of the Boston Company which is Mellon Financial and worked there for an additional 9 months as head of institutional growth equity division and my job was actually financial, to do the business planning for and start up of a separate subsidiary. It was called {unintelligible} Advisors

Q—And after that what did you?

A—After that I spent about 2 ½ years running my own company which was a an asset management company and also a consulting company. The consulting that I did was for other asset managers in the Boston area among them was Eastern Bank, my current employer.

Q—And for whom did you manage assets when you had your own firm?

A—All individuals it was all high net worth

Q—So you are in a position to determine suitability of investments for those high net worth individuals?

A—yes,

Q—And then you said you went to work for Eastern Bank. Can you tell us what you do?

A—I head up the investment team at Eastern Investment Advisers. This is a division of Eastern Bank, which is the largest remaining bank in Boston, based in Boston. We manage \$1.2 Billion, mostly for individuals. About 20% of our business is for charitable organizations and small institutions.

Q—So would you be in a position to determine suitability of investments for individuals?

A—Yes.

* * *

Q—Have you examined the needs of Claimant, Mr. Dennis?

A—Yes.

* * *

A. . . I am a chartered financial analyst and I, aside from my other responsibilities, I am vice chairman of the investment committee for the endowment of the University of Massachusetts

* * *

What criteria, you asked, I used to determine suitability. I was specifically asked to evaluate certain stocks as to their speculative nature and the criteria that I used to evaluate that were some of the following. I looked at financial strength. That would include things like the nature of the balance sheet, assets versus liabilities, cash, the amount of debt on the balance sheet, cash burn rate, cash flow, book

value, dividends, the size of the company as, all else being equal, bigger companies tend to be less speculative; debt rating if available, inclusion in the market indexes (a companies included in a major index generally tend to be less speculative) I also look at valuation, price-earnings ratios, price to book, and price value. To the extent that I know something about the management or the prospects for a company, I include that in the evaluation. So, the companies that are better managed are less speculative {unintelligible}. And finally I look at the operating history of the company and its growth rate, so specifically what I look at is earnings growth and revenue growth and the idea there would be that companies, which have been more stable and have better operating history, would be less speculative. Some companies which have exhibited a pattern of growth and profit over a period of time would be more stable and less speculative.”

16. Mr. Kattar then testified as to the suitability Mr. Dennis’s investments to his needs.

17. ELOT, Inc.

“I don’t have any information on it”

18. On information and belief the only possible inference is that this was a stock of little visibility, folded and therefore inappropriate.

19. Entremed

“I call this speculative and inappropriate”

20. H Power

“a company that no longer exists”

21. On information and belief the only possible inference is that this was a stock of little visibility, folded and therefore inappropriate.

22. Intasys

“speculative and inappropriate for most portfolios and certainly this one”

23. VA Linux Systems

“I would say it is speculative and inappropriate for most portfolios and certainly this one.”

24. SLI, Inc.

“I could not find anything on it {unintelligible}”

25. On information and belief the only possible inference is that this was a stock of little visibility, folded and therefore inappropriate.

26. Intellidata

“I don’t have any information”

27. On information and belief the only possible inference is that this was a stock of little visibility, folded and therefore inappropriate.

28. There is a great concentration of these stocks in the portfolio of Mr. Dennis’s retirement account as shown on Exhibit 4.

29. Respondent did not have an expert testify that the above stocks were suitable for his account; there is therefore no evidence to rebut the expert testimony of Mr. Kattar.

30. Respondent’s employee, also a respondent in the arbitration merely testified that the above stocks were “growth stocks.”